



(4337-15)

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

[189A2100DD/AAAA003010/A0T602020.999900]

**Ponca Tribe of Nebraska Liquor Control Ordinance**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

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**SUMMARY:** This notice publishes the Ponca Tribe of Nebraska's Liquor Control Ordinance. This Liquor Control Ordinance is to regulate and control the possession, sale, manufacture, and distribution of alcohol in conformity with the laws of the State of Nebraska for the purpose of generating new Tribal revenues. Enactment of this Ordinance will help provide a source of revenue to strengthen Tribal government, provide for the economic viability of Tribal enterprises, and improve delivery of Tribal government services.

**DATES:** This Ordinance takes effect on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. Todd Gravelle, Supervisory Tribal Operations Specialist, Great Plains Regional Office, Bureau of Indian Affairs, 115 Fourth Avenue South East, Suite 400, Aberdeen, South Dakota 57401 Telephone: (605) 226-7376, Fax: (605) 226-7379.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish

in the *Federal Register* notice of adopted liquor control laws for the purpose of regulating liquor transactions in Indian country. The Ponca Tribe of Nebraska duly adopted the Liquor Control Ordinance on July 21, 2018.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary–Indian Affairs. I certify that the Ponca Tribe of Nebraska Tribal Council duly adopted by Resolution this Liquor Control Ordinance by Resolution No. 18-43, on July 21, 2018.

Dated: August 22, 2018.

**Tara Sweeney,**  
*Assistant Secretary–Indian Affairs.*

The Ponca Tribe of Nebraska’s Liquor Control Ordinance shall read as follows:

**PONCA TRIBE OF NEBRASKA**

**TITLE XVI**

**LIQUOR CONTROL**

**CHAPTER 1**

**GENERAL PROVISIONS**

**Section 16-1-1. Authority.** This Title is enacted by the Tribal Council:

1. Pursuant to and in accordance with Article V, Section 1(j), (l), (o) and (p) of the Constitution;
2. Pursuant to and in accordance with federal statutes and other laws, including the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. § 1161, which provide a federal legal basis for the Tribe to regulate liquor on Tribal lands; and

3. In conformity with applicable state laws.

**Section 16-1-2. Purpose.** The Tribe wishes to exercise its sovereignty and federal delegated authority to control liquor on Tribal lands and, therefore, the purpose of this Title is:

1. To control liquor distribution, sale and possession on Tribal lands;
2. To establish procedures for the licensing of the manufacture, distribution and sale of liquor on Tribal lands; and
3. To otherwise regulate the manufacture, distribution, sale and consumption of liquor.

**Section 16-1-3. Definitions.** Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. “Alcohol” means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin, and includes synthetic ethyl alcohol and alcohol processed or sold in a gaseous form, but excludes denatured alcohol or wood alcohol.
2. “Beer” means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and includes, but is not limited to, beer, ale, malt liquor, stout, lager beer, porter, near beer, flavored malt beverage, and hard cider.
3. “Board” means the Ponca Tribe of Nebraska Liquor Control Board.
4. “Board member” means a member of the Board.
5. “Brewer” means any person engaged in the business of manufacturing beer.
6. “Distiller” means any person engaged in the business of distilling spirits.
7. “Distribute” means to deliver or sell liquor products prior to retail sale.
8. “Liquor” means alcohol, beer, spirits, wine, all other fermented, spirituous, vinous, or malt liquors, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor or otherwise intoxicating, and includes every liquid, solid, semi-solid or other substance, patented or not, containing alcohol, beer, spirits, or wine and all preparations or mixtures of liquor capable of human consumption.

9. “Manufacturer” means a person engaged in the preparation of liquor for sale in any form whatsoever, including brewers, distillers, and wineries.

10. “On-sale” means the sale of liquor for consumption upon the premises where sold.

11. “Off-sale” means the sale of liquor for consumption off the premises where sold.

12. “Retailer” means any person who acquires liquor from a wholesaler or otherwise sells, distributes, or gives away any liquor from any location or facility for any purpose other than resale or further processing.

13. “Sale” means the transfer of ownership of, title to, or possession of goods for money, other goods, services, or other valuable consideration, including bartering, trading, exchanging, renting, leasing, conditional sales, and any sales where possession of goods is given to the buyer but title is retained by the seller as security for the payment of the purchase price.

14. “Spirits” means any beverage which contains alcohol obtained by distillation, whether mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances.

15. “Tribal Court” means the Ponca Tribe of Nebraska Tribal Court.

16. “Tribal lands” means:

a. All lands held in trust by the United States for the benefit of the Tribe or its members;

b. All fee lands owned by the Tribe and located within one or more of the Tribe's service areas as defined by Public Law 101-484 and any amendments thereto; and

c. All lands of the Tribe or its members defined as Indian country by 18 U.S.C. § 1151, including dependent Indian communities.

17. “Wholesaler” means any person who acquires or otherwise possesses liquor for resale or otherwise sells, distributes, resells or gives away liquor to a retailer.

18. “Wine” means any alcoholic beverage obtained by fermentation of fruits, vegetables or other agricultural products containing sugar, including such beverages when fortified by the addition of alcohol or spirits.

**Section 16-1-4. Consent to Jurisdiction.** Any person who resides on Tribal lands or conducts business or engages in a business transaction on Tribal lands or with the Tribe, enters into a consensual relationship with Tribe, acts under Tribal authority, or enters on Tribal lands shall be deemed to have consented to the following:

1. To be bound by the terms of this Title; and
2. To the exercise of jurisdiction by the Tribal Court over him or her in an action arising under this Title.

**Section 16-1-5. Non-Liability.** There shall be no liability on the part of the Tribe, its agencies, departments, enterprises, agents, officers, officials or employees for any damages which may occur as a result of reliance upon or conformity with the provisions of this Title.

**Section 16-1-6. Severability.** If any chapter, section or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections and provisions of this Title and amendments made by this Title shall continue in full force and effect.

**Section 16-1-7. Sovereign Immunity.** Except where expressly waived by a section of this Title specifically referring to a waiver of sovereign immunity, nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials or employees.

## **CHAPTER 2**

### **LIQUOR CONTROL BOARD**

**Section 16-2-1. Establishment.**

1. There is hereby established a liquor control board to be known as the Ponca Tribe of Nebraska Liquor Control Board as an agency of the Tribe, under the authority of the Tribe, and delegated the powers, duties, and responsibilities set forth in this Title and as otherwise provided by the laws of the Tribe.

2. The Board may employ such other personnel and employees as may be required for the proper discharge of its duties under this Title, provided that, to the

maximum extent feasible, the Board shall first use personnel and employees of the Tribal administration as authorized in this Chapter.

**Section 16-2-2. Composition.** The Board shall consist of five (5) members as follows:

1. One (1) Tribal Council member designated by the Tribal Council, who shall serve as the Chairperson of the Board; and

2. Four (4) individuals who shall be appointed by the Tribal Council.

**Section 16-2-3. Qualifications.** To be qualified to be appointed a Board member, a person shall:

1. Be at least the age of majority;

2. Have no conflicts of interest, as defined in this Chapter;

3. Not have been convicted of any felony or any crime involving or related to alcohol or drugs in any court of any jurisdiction in the five (5) years prior to appointment unless pardoned and fully restored of his or her civil rights by the proper authorities prior to appointment;

4. Be willing and able to comply with the ethical duties of Board members, as defined in this Chapter;

5. Be willing and able to perform the Board's duties in compliance with the laws of the Tribe;

6. Have or acquire knowledge of this Title;

7. Have the time available to actively fulfill the duties of a Board member; and

8. Be willing to receive orientation and training regarding the duties of the Board.

**Section 16-2-4. Term of Office.**

1. The Tribal Council member designated by the Tribal Council to serve on the Board shall hold office until he or she no longer holds office on the Tribal Council regardless of whether there is a successor in the office, but a former Tribal Council member designated by the Tribal Council to serve on the Board may be appointed to another position on the Board in accordance with this Chapter.

2. Upon the selection of the initial Board members, the Tribal Council shall choose from the members other than the Tribal Council member designated by the Tribal Council to serve on the Board, by lot, one (1) Board member who will serve an initial term of one (1) year, one Board member who will serve an initial term of two (2) years, and two (2) Board members who will serve an initial term of three (3) years. Thereafter, the term of office for Board members shall be three (3) years.

3. Except as otherwise provided herein, each Board member shall serve until he or she resigns, is removed, or the Tribal Council appoints his or her successor.

**Section 16-2-5. Compensation.** Board members shall be compensated at a rate set by the Tribal Council. In addition, Board members shall be paid for mileage for every Board meeting attended in accordance with the rules applicable to and at the standard rate established for Tribal officers and employees.

**Section 16-2-6. Resignation and Removal.**

1. Any Board member may resign from his or her position by delivering a written resignation to the Tribal Council.

2. Any Board member who is a Tribal Council member designated by the Tribal Council to serve on the Board shall automatically be removed from the Board upon the Tribal Council member's resignation or removal from the Tribal Council.

3. The Tribal Council may, by majority vote, remove a Board member for any the following:

- a. Violating or permitting violation of this Title;
- b. Neglect of duty;
- c. Malfeasance or misfeasance in the handling of liquor control matters;
- d. Acceptance or solicitation of bribes;
- e. Violation of the ethical duties or conflict of interest provisions of this Chapter;
- f. Unexcused absence from three (3) or more consecutive Board meetings;
- g. Any crime committed against the Tribe which results in a conviction or admission of guilt; or

h. Upon the happening of any event which would have made the Board member ineligible for appointment if the event had occurred prior to appointment.

4. The Tribal Council's decision to remove a Board member shall be final and not subject to challenge, review or appeal.

**Section 16-2-7. Vacancies.** In the event of a vacancy on the Board, whether by removal, resignation, or otherwise, the Tribal Council shall appoint a replacement to serve the remaining term of the Board member being replaced. In the event of an emergency vacancy, the Tribal Council may hold a special meeting to fill the vacancy.

**Section 16-2-8. Officers.**

1. The Chairperson of the Board shall call and preside over Board meetings. The Chairperson shall report to the Tribal Council as required.

2. The Board shall elect from its members a Secretary at its first meeting in each calendar year or at the next meeting of the Board if a vacancy occurs in the office of Secretary.

3. The Secretary shall be responsible for assuring the timely and proper production, distribution and storage of all written records of the Board, including administrative and financial documents. The Secretary shall keep minutes of all meetings of the Board and shall keep informed about the Board's expenditures and budget.

**Section 16-2-9. Ethics and Conflicts.**

1. No person may be appointed to the Board who:

a. Is employed by, an officer of, or has a private ownership interest, whether direct or indirect, in any entity or organization that is a retailer, wholesaler, manufacturer, brewer or distiller;

b. Is engaged in litigation against the Tribe in a matter related to the subject matter of the Board; or

c. Has a similar interest that would necessarily conflict with the impartial performance of a Board member's duties.

2. The Tribal Council's determination whether an applicant for the Board is barred from appointment by a conflict of interest shall be final and not subject to challenge, review or appeal.



3. Board members shall:

a. Not accept or request any gift, gratuity, compensation, employment or other thing of value from any manufacturer, wholesaler, retailer, holder or applicant for a liquor license, or other person subject to this Title;

b. Avoid the appearance of impropriety;

c. Not act in an official capacity when a matter before the Board directly and specifically affects a Board member's own interests or the interests of his or her immediate family;

d. Not attempt to exceed the authority granted to Board members by this Title;

e. Recognize that the authority delegated by this Title is to the Board as a whole, not to individual Board members and, accordingly, the powers of the Board may only be exercised by the Board acting through the procedures established by this Title;

f. Not take action on behalf of the Board unless authorized to do so by the Board;

g. Not involve the Board in any controversy outside the Board's duties; and

h. Hold all confidential information revealed during the course of Board business in strict confidence and discuss or disclose such information only to persons who are entitled to the information and only for the purpose of conducting official Board business.

**Section 16-2-10. Recusal.**

1. No Board member shall participate in any action or decision by the Board directly involving:

a. Himself or herself;

b. A member of his or her immediate family;

c. Any person, business or other entity of which he or she or a member of his or her immediate family is an employee;

d. Any business or other entity in which he or she or a member of his or her immediate family has a substantial ownership interest; or

e. Any business or other entity with which he or she or a member of his or her immediate family has a substantial contractual relationship.

2. Nothing in this Section shall preclude a Board member from participating in any action or decision by the Board which:

a. Generally affects a class of persons, regardless of whether the Board member or a member of his or her immediate family is a member of the affected class; and

b. Affects the Tribe, an economic enterprise of the Tribe, or a person or entity in a contractual relationship with the Tribe or an economic enterprise of the Tribe, regardless of whether the Board member is also a member of the Tribe.

3. A Board member may voluntarily recuse himself or herself and decline to participate in any action or decision by the Board when the Board member, in his or her own discretion, believes:

a. That he or she cannot act fairly or without bias; or

b. That there would be an appearance that he or she could not act fairly or without bias.

**Section 16-2-11. Quorum.** Three (3) Board members shall constitute a quorum for conducting business.

**Section 16-2-12. Meetings.**

1. The Board may hold meetings as it deems necessary.

2. The Chairperson of the Board shall have the authority to call a meeting of the Board as he or she sees fit upon forty-eight (48) hours written notice. Written notice to a Board member may be dispensed with as to any Board member who is actually present at the meeting at the time it convenes.

3. The Board may conduct a meeting exclusively by telephone, video conference or other electronic means provided that the notice of the Board meeting provides the manner in which the meeting will be conducted and includes information on how a person may attend the meeting, such as a telephone number for participation in the meeting.

4. All decisions of the Board shall be made by a majority vote of the Board members attending the meeting, provided a quorum is present, unless otherwise provided in this Title.

5. Matters dealing with personnel or other confidential matters shall be conducted in executive session and shall not be open to the public.

**Section 16-2-13. Powers and Duties of Board.** The power, authority and duties of the Board shall be as follows:

1. To administer, implement and enforce this Title;
2. To make recommendations to the Tribal Council concerning amendments to this Title;
3. To receive applications for and issue to and suspend, cancel and revoke licenses of manufacturers, wholesalers, and retailers in accordance with this Title and the rules and regulations of the Board;
4. To obtain information and conduct background investigations to determine the suitability of an applicant for a license;
5. To bring legal action in the name of the Tribe to enforce this Title;
6. To inspect any premises where liquor is manufactured, distributed, or sold as provided in this Title;
7. To conduct an audit to inspect any licensee's records and books as provided in this Title;
8. To conduct hearings and hear appeals authorized by this Title, provided the Board shall have no authority to declare any portion of this Title or other law of the Tribe invalid for any reason;
9. In the conduct of any hearing or audit, to issue subpoenas, compel the attendance of witnesses, administer oaths, and require testimony under oath at any hearing conducted by the Board;
10. To examine, under oath, either orally or in writing, any person with respect to any matter subject of this Title;
11. To collaborate and cooperate with such other agencies of the Tribe, other tribes, the United States and the states as necessary to implement and enforce this Title;

12. To develop standard forms and to require by regulation the filing of any such forms or reports necessary for implementation of this Title;

13. To utilize or adopt forms from other appropriate jurisdictions to use as its own so long as such forms meet the requirements of the laws of the Tribe for which such forms are utilized;

14. To promulgate rules and regulations, subject to approval of the Tribal Council and consistent with the laws of the Tribe, which are necessary for carrying out this Title;

15. To delegate any of its power, authority and duties to an individual Board member or other personnel or employee of the Board, provided that the Board shall not delegate its power to promulgate rules and regulations or to conduct hearings and hear appeals; and

16. To perform all other duties delegated or assigned to the Board by this Title or other laws of the Tribe or the Tribal Council and otherwise implement this Title.

**Section 16-2-14. Obtaining Information.**

1. The Board may request such information relevant and material to the enforcement of this Title from any and all persons who:

a. Are engaged in the introduction, sale, distribution, or possession of liquor on Tribal lands or with the Tribe; or

b. Are otherwise subject to the jurisdiction of the Tribe.

2. Upon a written request, such persons shall provide the information requested by the Board. The Board may issue a subpoena as provided in this Chapter or request the Court to issue a subpoena or other order, including ex parte without a hearing, to obtain the information required to be provided under this Section.

**Section 16-2-15. Investigative Authority.**

1. For the purpose of enforcing the provisions of this Title, the Board shall have the authority to inspect property during regular business hours, to examine and require the production of any pertinent records, books, information, or evidence, and to require the presence of any person and require testimony under oath concerning the subject matter of any inquiry of the Board, and to make a permanent record of the proceeding.

2. For the purpose of accomplishing the authority granted in this Section, the Board shall have the power to issue subpoenas and summons requiring attendance and testimony of witnesses and production of papers or other things at any hearing held pursuant to this Title.

3. If a person fails to comply with a subpoena issued by the Board, the Board may apply to the Tribal Court for issuance of an order to show cause which directs that the person against whom the subpoena was issued shall comply with the subpoena within ten (10) business days or show cause why he or she should not be held in contempt of court in accordance with the laws of the Tribe. The Tribal Court shall issue the order to show cause without notice or hearing, unless the Court finds that the subpoena was not lawfully issued or was not properly served in accordance with this Section.

4. Any subpoena, summons or notice issued by the Board shall be served in the manner provided for service of the same in the rules of procedure governing civil actions in Tribal Court.

**Section 16-2-16. Rules and Regulations.** The Board shall promulgate rules and regulations, not inconsistent with this Title and subject to the approval of Tribal Council, as it deems necessary or desirable in the public interest in carrying out the duties of the Board including, but not limited to:

1. Internal operational procedures;
2. The forms to be used for purposes of this Title;
3. Procedures for conducting investigations and inspections;
4. Procedures for all hearings conducted by the Board;
5. Conditions of sanitation of premises of licensees of the Board; and
6. Protection of the due process rights of all persons subject to the enforcement of this Title by the Board.

**Section 16-2-17. Board Seal.**

1. The Board shall acquire an official seal which shall be used on all original and/or certified copies of all documents of the Board to evidence their authenticity.
2. The seal of the Board shall:
  - a. Be circular in shape;
  - b. Contain the words “Ponca Tribe of Nebraska” around the top edge;

- c. Contain the words “Liquor Control Board” around the bottom edge; and
  - d. Contain the words “Official seal” in the center.
3. The seal shall be secured at all times to prevent unauthorized use.

#### **Section 16-2-18. Stamps and Licenses.**

1. The Board shall provide for the form, size, color and identifying characteristics of all licenses, permits, stamps, tags, receipts or other instruments evidencing receipt of any license or payment of any fee administered by the Board or otherwise showing compliance with this Title.

2. Any instrument developed by the Board under this Section shall contain at least the following information:

- a. The words “Ponca Tribe” or, if space allows, “Ponca Tribe of Nebraska;”
- b. If space allows, the words “Liquor Control Board;”
- c. If the instrument is a license or permit, an indication of the type of license or permit, its effective dates, and the name and address of the person to whom it is issued; and
- d. If the instrument is a receipt, an indication of what the receipt is for, any amount the receipt is for, and the name and address of the person to whom it is issued.

3. The Board shall provide for the manufacture, delivery, storage and safeguarding of any instrument developed under this Section and shall safeguard such instruments against theft, counterfeiting and improper use.

#### **Section 16-2-19. Records of Board.**

1. The Board shall create and maintain accurate and complete records which contain information and documents necessary for the proper and efficient operation of the Board, including, but not limited to:

- a. All licenses, permits, and the like issued and any fees received for the same;
- b. All fees and penalties imposed, due and collected; and

c. Each and every official transaction, communication or action of the Board.

2. The records of the Board shall be maintained at the office of the Board and shall not be removed from said office without the written authorization of the Board.

3. Except where provided otherwise in the laws of the Tribe, the records and other information of the Board shall be considered public records of the Board and shall be provided or made available for inspection during regular business hours upon proper written request to the Board and payment of any copying costs set by the Board, provided that confidential personal information appearing in such records is rendered unreadable prior to provision or inspection.

4. The records of the Board shall be subject to audit at any time at the direction of the Tribal Council, but not less than once each year.

**Section 16-2-20. Use of Other Resources.** In carrying out its duties and responsibilities:

1. The Board may use the services, information or records of other departments and agencies of the Tribe or otherwise available to the Tribe, both from within and without the Tribe, and such departments, agencies and others shall furnish such services, information or records upon request of the Board; and

2. The Board may use personnel and employees of the Tribal administration as it would personnel and employees of the Board, provided the Board coordinates with and obtains approval from the Tribal administration.

### **CHAPTER 3**

#### **LIQUOR LICENSES**

**Section 16-3-1. License Required.** No person may sell, distribute or manufacture liquor on Tribal lands except as specifically authorized by a license issued in accordance with this Chapter and compliance with all other applicable laws governing the same.

**Section 16-3-2. Exemptions.** The following liquor and activities shall be exempt from the provisions of this Title, including the requirement of a liquor license:

1. Any pharmaceutical preparation containing liquor which is prepared by a druggist according to a formula of the pharmacopeia or dispensatory of the United States;

2. Wine or beer manufactured in a residence for consumption therein and not for sale;

3. Alcohol used or intended for use:
  - a. For scientific research or manufacturing products other than liquor;
  - b. By a physician, medical or dental clinic, or hospital;
  - c. In tinctures or toilet, medicinal, and antiseptic preparations and solutions not intended for internal human use nor to be sold as beverages, and which are unfit for beverage purposes, such as cleaning compounds;
  - d. In food products known as flavoring extracts when manufactured and sold for cooking, culinary, or flavoring purposes, and which are unfit for use for beverage purposes; or
  - e. By persons exempt from regulation in accordance with the laws of the United States;
4. Ethanol or ethyl alcohol for use as fuel; and
5. Liquor used in a bona fide religious ceremony.

#### **Section 16-3-3. Liquor Licenses.**

1. Licenses issued by the Board shall be of the following types:
  - a. Manufacturer license;
  - b. Wholesale license;
  - c. Retail license; and
  - d. Special event license.
2. Except for special event licenses, a license issued by the Board shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.
3. Any person required to obtain a license under this Chapter who fails to obtain such license or who continues to manufacture, distribute or sell liquor after such license has been revoked shall forfeit his or her right to manufacture, distribute or sell liquor on Tribal lands until he or she complies with all of the provisions of this Title.

#### **Section 16-3-4. Manufacturer License.**

1. Any person who is a manufacturer, brewer or distiller located on Tribal lands shall be required to first obtain a manufacturer license from the Board. If a person



manufactures liquor at two or more separate places of business on Tribal lands, a separate manufacturer license shall be required for each place of business.

2. A manufacturer license shall allow:

a. The manufacture, distilling, brewing, and storage of liquor on Tribal lands;

b. The sale of liquor to wholesale and retail licensees on Tribal lands without the requirement of any other license under this Chapter; and

c. The retail on-sale of liquor to individuals on the premises of the manufacturer without the requirement of any other license under this Chapter.

3. The annual fee for a manufacturer license shall be one thousand dollars (\$1,000.00).

#### **Section 16-3-5. Wholesale License.**

1. Any person who engages in the sale of liquor to manufacturers, retailers or wholesalers on Tribal lands shall be required to first obtain a wholesale license from the Board. If a person sells or delivers from or stores liquor at two or more separate places of business on Tribal lands, a separate wholesale license shall be required for each place of business.

2. A wholesale license shall allow:

a. The wholesale purchase, importation, and storage of liquor and sale of liquor to licensees on Tribal lands; and

b. The sampling of liquor on the premises of the licensee or a licensed retailer by a licensee and his or her employees.

3. The annual fee for a wholesale license shall be seven hundred fifty dollars (\$750.00).

#### **Section 16-3-6. Retail License.**

1. Any person who engages in the retail sale of liquor on Tribal lands shall be required to first obtain a retail license from the Board. If a person makes sales at two or more separate places of business on Tribal lands, a separate retail license shall be required for each place of business.

2. A retail license shall allow the licensee to sell and offer for sale liquor on the premises of the licensee specified in the retail license at retail for use or consumption but not for resale in any form.

3. A retail license shall designate whether the licensee is permitted to make on-sales or off-sales, but shall not permit both.

4. The annual fee for a retail license shall be two hundred fifty dollars (\$250.00).

#### **Section 16-3-7. Special Event License.**

1. Any person who engages in the retail sale of liquor on Tribal lands for a period of less than seven (7) consecutive days for an event shall be required to first obtain a special event license from the Board. If a person makes sales at two or more separate locations or events on Tribal lands, a separate special event license shall be required for each location.

2. A special event license shall allow the licensee to sell and offer for sale liquor at retail for use or consumption on the premises of the event specified in the license, but not for resale in any form.

3. A special event license shall designate the precise day or period of days for which the license was issued and shall be valid only for such designated day or days.

4. The fee for a retail license shall be fifty dollars (\$50.00) per day.

5. The Board may provide by regulation for issuing special event licenses with reduced or no fees and utilizing expedited applications and procedures exempt from the notice and hearing requirements of this Chapter to licensed retailers conducting on-sales, including caterers and the like, for the purpose of allowing such retailers to sell and offer for sale liquor at events on premises other than the premises designated in the retail license.

#### **Section 16-3-8. Registration of Salesmen.**

1. No person may take or solicit orders for liquor on Tribal lands without first registering with the Board and providing the following:

- a. His or her name and address;
- b. The name and address of his or her employer or principal; and
- c. Such other information the Board may require.

2. There shall be no fee for registration under this Section, but registration shall require renewal each calendar year.

**Section 16-3-9. Application for License.**

1. Any person or entity desiring a license pursuant to this Chapter shall complete and file an application for the appropriate license with the Board and pay such application fee as may be set by the Board to defray the costs of processing the application.

2. In addition to any other items required by the Board, all applications for a license pursuant to this Chapter shall include the following:

- a. The name, address and telephone number of the applicant;
- b. Any other names used by the applicant, including trade names;
- c. Whether the applicant is a partnership, corporation, limited liability company, sole proprietorship or other entity and the jurisdiction where the applicant is organized or registered to conduct business;
- d. The names, addresses, telephone numbers and social security numbers of the applicant's principals, which shall include the applicant's officers, directors, managers, owners, partners, stockholders that own twenty-five percent (25%) or more of the applicant's business, and the ten (10) largest stockholders of applicant's business regardless of percentage of stock owned;
- e. The identity of all persons, other than principals, who have an economic interest in the applicant's business;
- f. The federal tax identification number or social security number of the applicant;
- g. The location where the applicant intends to sell, distribute or manufacture liquor, as the case may be;
- h. The type of application desired;
- i. Whether the applicant will sell, distribute or manufacture liquor on Tribal lands;
- j. Whether the applicant is licensed by the appropriate state within whose boundaries the applicant is located to sell, distribute, or manufacture liquor, as applicable;

k. Information on each liquor license which the applicant has held in any jurisdiction;

l. Whether the applicant or any of its principals have been convicted of or plead guilty to a felony or any criminal offense regarding liquor;

m. Whether the applicant or any of its principals have had a liquor license revoked or suspended in any jurisdiction; and

n. Agreement by the applicant to comply with the laws of the Tribe and all conditions of the license issued by the Board.

#### **Section 16-3-10. Notice of Application.**

1. Upon receipt of an application for a license, the Board shall issue a notice of the application which shall include:

a. The name of the applicant;

b. The location where the applicant intends to sell, distribute or manufacture liquor;

c. The date the Board intends to consider the application, which shall be no sooner than thirty (30) days after the notice is posted in accordance with this Section;

d. Information on submitting comments on the application to the Board by mail or electronic means; and

e. A statement that comments on the application must be received no later than the day prior to the Board considering the application.

2. The notice of the application shall be posted at all Tribal governmental offices and on the Tribe's website for at least thirty (30) days and, if an edition of the Tribal newsletter will be released prior to consideration of the application, published in the Tribal newsletter.

3. Persons may submit comments on the application in the manner prescribed by the Board any time prior to the Board considering the application.

#### **Section 16-3-11. Processing Application.**

1. Upon receipt of an application for a license, the Board shall conduct or cause to be conducted a background investigation of the applicant and each of its principals. The background investigation shall include, at a minimum:

a. Verification of the applicant's business organization and registration status;

b. Verification of the applicant's state liquor license, its status and any enforcement history; and

c. Conducting a criminal history check of the applicant and the applicant's principals.

2. The Board shall issue a license to an applicant only if it finds, after considering the application and any comments submitted by the public:

a. The applicant did not knowingly provide any false information to the Board regarding its application;

b. The applicant is or is expected to be licensed by the appropriate state within whose boundaries the applicant is located to sell, distribute, or manufacture liquor, as applicable;

c. If the applicant is a corporation or other entity, that it is organized under the laws of the Tribe or registered to conduct business on Tribal lands in accordance with the laws of the Tribe governing the same;

d. Neither the applicant nor any of its principles has been convicted of or plead guilty to a felony or any criminal offense related to liquor in any jurisdiction;

e. Neither the applicant nor any of its principals has had a liquor license revoked in any jurisdiction in the previous two (2) years;

f. The requirements of this Title and the Board's regulations have been met;

g. The applicant's capability, qualifications, and reliability are satisfactory; and

h. The best interests of the Tribe, its members, and the community as a whole will be served by the issuance of the license.

3. In reviewing an applicant's capability, qualifications and reliability, the Board shall consider:

a. The character and reputation of the applicant;

- b. The suitability of the physical premises of the applicant;
- c. The plan of operation of the applicant; and
- d. Any other relevant consideration.

4. In reviewing the interests of the Tribe, its members and the community as a whole, the Board shall consider:

- a. The need of the area to be served by the applicant;
- b. The number of existing licensed businesses covering the area;
- c. The desires of the community within the area to be served;
- d. Any law enforcement problems which may arise because of the sale, distribution or manufacture of liquor by the applicant; and
- e. Any other relevant consideration.

5. The Board, in its discretion and upon notice to the applicant and the public, may conduct a hearing regarding any application. Such hearing shall be open to the public and any interested persons shall be permitted to present information, including witnesses and evidence, to the Board regarding the application.

6. If an applicant has not obtained a liquor license from the appropriate state within whose boundaries the applicant is located, the Board may approve the applicant's license conditioned upon the receipt of such state liquor license. If the Board conditionally approves a license pursuant to this subsection, the Board shall not issue a license to the applicant unless and until the applicant provides satisfactory proof that it has received a state liquor license.

7. The Board shall issue a decision on the application in writing. The Board's decision shall be served on the applicant and posted at all Tribal governmental offices and on the Tribe's website for at least fifteen (15) days and published in the next edition of the Tribal newsletter.

#### **Section 16-3-12. Form of License.**

- 1. Each license issued pursuant to this Chapter shall specify:
  - a. The name and address of the licensee;
  - b. The type of license issued;

- c. The premises to which the license applies;
  - d. If the license is a manufacturer license, the type of liquor the licensee is permitted to manufacture, distill, brew, store, and sell; and
  - e. If the license is a retail license, whether it permits on-sales or off-sales with respect to the premises to which the license applies.
- 2. The licensee must keep the license posted at all times in a conspicuous place on the premises for which it has been issued.
  - 3. Licensees must pay all taxes assessed against it under the laws of the Tribe.
  - 4. Licensees shall comply, as a condition of retaining such license, with all applicable laws of the Tribe and with all requests of the Board for inspection, examination and audit permitted under this Title.
  - 5. Notwithstanding anything else in the laws of the Tribe, a license issued pursuant to this Chapter constitutes only a permit to the licensee to conduct the activities permitted by the license for the duration of the license and shall not be construed or deemed to constitute a property or other vested right of any kind or give rise to a legal entitlement to a license for any future period of time.

#### **Section 16-3-13. Renewal of License.**

- 1. A licensee may renew its license by filing an application for renewal with the Board and paying such renewal application fee as may be set by the Board to defray the costs of processing the application.
- 2. The renewal application shall identify any changes in information required on the licensee's application for a license since the issuance of the license or previous renewal, whichever is later, or the applicant shall certify that no such information has changed.
- 3. A license issued pursuant to this Chapter shall be automatically renewed upon submission of a renewal application and payment of the applicable annual license fee, unless:
  - a. Information required on the application for a license has changed in such a manner that it makes the licensee ineligible for a license under this Chapter; or

- b. The Board determines in writing that renewal would not be in the best interests of the Tribe, its members or the community as a whole.

#### **Section 16-3-14. Transfer and Modification of License.**

1. No license issued pursuant to this Chapter may be assigned or transferred to any other person or entity.

2. Any change in ownership of the licensee that constitutes more than fifty percent (50%) of the ownership interest in a licensee shall require the issuance of a new license in accordance with this Chapter.

3. A licensee may request a change in the name and/or address of the licensee or a change in location of the premises to which the license applies by applying with the Board for a modification of the license in accordance with this Section and paying such fee as may be set by the Board to defray the costs of processing the modification.

4. The Board shall approve a change in the address of the licensee upon request, provided the change in address is not a change in location. The Board shall approve a change in the name of the licensee provided that the name is not the name of an individual and the change is not the result of any change in more than fifty percent (50%) of the ownership interest in the licensee.

5. If a licensee requests a change in location, the Board shall issue and post a notice of the modification of location and permit public comment the same as an application for a new license. The Board shall approve a change in location only if it finds, after considering the application and any comments submitted by the public:

- a. The applicant has obtained or is in the process of obtaining a license or modification for the new location from the appropriate state within whose boundaries the applicant is located, provided that the Board may approve the change in location conditioned upon the receipt of such state license or modification so long as the Board does not issue the modified license unless and until the applicant provides satisfactory proof that it has received a state license or modification;

- b. The physical premises of the new location is suitable for the license; and

- c. The best interests of the Tribe, its members and the community as a whole will be served by the modification of the location.



6. If the Board approves a modification of a license pursuant to this Section, the Board shall issue a modified license to the licensee reflecting the modified information. The modified license shall expire on the same date as the original license.

7. Any modification of a license not provided for in this Section shall require the issuance of a new license in accordance with this Chapter.

**Section 16-3-15. Appeal.** An applicant or licensee may request a formal conference regarding or file an appeal of a decision of the Board denying an application for a license or any renewal or modification thereof in accordance with the provisions of this Title governing appeals before the Board.

**Section 16-3-16. Sale of Stock.**

1. Upon revocation, non-renewal or other termination of a license issued pursuant to this Chapter, a former licensee may dispose of any liquor in its stock within thirty (30) days of expiration of its former license by:

- a. Selling such stock in whole or in part to a wholesaler or retailer licensed pursuant to this Chapter;
- b. Selling such stock in whole or in part to a wholesaler or retailer located outside Tribal lands and authorized to purchase such liquor;
- c. Moving such stock in whole or in part outside Tribal lands to a location where such liquor is authorized to be stored or held; or
- d. Destroying such liquor under the supervision of the Board.

2. The Board may grant a former licensee an additional twenty (20) days to sell or otherwise dispose of its stock upon the former licensee showing good cause for such extension and no failure in due diligence to make such disposal.

3. Any liquor remaining in the possession of a former licensee and not disposed of in accordance with this Section shall be treated as contraband in accordance with this Title.

4. A former licensee shall submit to the Board a complete report of the disposition of all stock pursuant to this Section.

**Section 16-3-17. Duty to Keep Records.** Every licensee shall keep and maintain accurate records of the purchase and sale of liquor, including books of account, invoices, and bills. Such records shall be maintained for a period of at least two (2) years.

### **Section 16-3-18. Operation of Licensed Premises.**

1. No licensee may reseal, reuse, or refill any package that contains or contained liquor.
2. No retail licensee may lock, or permit the locking of the entrances to the licensed premises until all persons other than the licensee and its employees have left.
3. No licensee may change the name of its licensed premises without first obtaining a modification of its license as provided in this Chapter.
4. A licensee shall conduct its business in a decent, orderly and respectable manner and shall not permit loitering by intoxicated persons, rowdiness, undue noise, or any other disturbance offensive to the residents of Tribal lands.
5. A retail licensee shall demand satisfactory evidence of a person's age upon such person's attempt to purchase any liquor from the retail licensee if such person appears to the retail licensee to be under the age of twenty-one (21) and shall refuse to sell liquor to any such person who fails or refuses to produce such satisfactory evidence. Satisfactory evidence of age shall include:
  - a. A driver's license or identification card validly issued by any state department of motor vehicles;
  - b. A United States active duty military identification;
  - c. A passport validly issued by any jurisdiction; and
  - d. Identification card issued by a federally recognized tribe which includes a photograph and date of birth.

### **Section 16-3-19. Insurance.**

1. Licensees and their employees are liable for injuries or damage to property resulting from their negligent or reckless acts and omissions, whether in the operation of the licensed premises or in their violation of this Title.
2. All manufacturers and retailers conducting on-sales shall maintain insurance coverage insuring against liability under this Section in the amount of at least \$1,000,000.00 for bodily injury to any one (1) person, \$500,000.00 for any one (1) accident or personal injury, and \$100,000.00 for property damage.

## **CHAPTER 4**

### **ENFORCEMENT AND VIOLATIONS**

### **Section 16-4-1. Complaints.**

1. Allegations of a violation of this Title shall be presented to the Board by submitting a complaint with such allegation in writing to the Chairperson of the Board or his or her designee.

2. A complaint may be submitted by any Board member or member of the public who believes that a person has committed a violation of this Title.

3. A complaint shall specify the person against whom the allegation is being made and the conduct that is alleged to be in violation of this Title.

4. Upon receipt of a complaint pursuant to this Section, the Board shall review the complaint to determine if the allegations made fall within the scope of this Title and whether, assuming the facts alleged are true, said facts would constitute a violation of this Title.

5. If the Board determines that the allegations do not fall within the scope of this Title or do not allege facts which, if true, would constitute a violation of this Title, the Board shall provide written notice to the complainant which shall state that:

a. The Board received the complaint;

b. The Board has reviewed the complaint in accordance with the provisions of this Chapter;

c. The Board has determined that the allegations do not fall within the scope of this Title and/or do not allege facts which would constitute a violation of this Title; and

d. The matter is closed.

6. If the Board determines that the allegations fall within the scope of this Title and allege facts which, if true, would constitute a violation of this Title, the Board shall make or cause to be made a preliminary investigation of the allegations in the complaint and, if there is reason to believe the allegations in the complaint, the Board shall issue a notice of violation as provided in this Chapter.

### **Section 16-4-2. Examination and Audit.**

1. The Board may examine and audit any licensee for the purpose of enforcing this Title.

2. In conducting an examination and audit pursuant to this Section, the Board may:

a. Examine any books, records, papers, maps, documents, or other data which may be relevant and material to the inquiry upon reasonable notice:

i. During normal business hours;

ii. At any other time agreed to by the person having possession, custody or care for such data; or

iii. At any time pursuant to an order of the Tribal Court;

b. Summon the licensee, any officer or employee or agent of the licensee, or any person having possession, custody or care of the books of account containing entries relating to the business of the licensee or required to perform the act, or any other person the Board may deem proper, to appear before the Board at the time and place named in the summons and to produce such books, records, papers, maps, documents or other data, and to give such testimony, under oath, as may be relevant or material to the inquiry; and

c. Take testimony of any person, under oath, as may be relevant or material to the inquiry.

#### **Section 16-4-3. Notice of Violation.**

1. If the Board has reason to believe that a violation of this Title has occurred, the Board shall issue a notice of violation to all persons accused of the violation.

2. A notice of violation shall state:

a. The specific provisions of this Title alleged to have been violated;

b. The Board will consider any written response to the notice of violation from the accused before determining whether to proceed with the notice of violation; and

c. The accused may respond in writing to the notice of violation within fourteen (14) calendar days of service of the notice.

3. If a notice of violation is not delivered to a person accused of the violation personally at the time of issuance, it shall be served on such person in the manner

provided for service of a summons in the rules of procedure governing civil actions in Tribal Court.

4. The accused shall have the right to respond to a notice of violation within the time stated in the notice of violation. The accused may include copies of any documents which the accused believes support his or her position.

5. After the time has expired for the accused to respond to a notice of violation, the Board shall consider any written response to the notice of violation and determine how to proceed with the notice of violation. Based on its review, the Board may:

a. Close the notice of violation if satisfied by the accused's response;  
or

b. Conduct or cause to be conducted a thorough investigation of the notice of violation.

6. If an investigation is conducted and such investigation reveals that there is evidence to support that a violation of this Title occurred, the Board shall determine an appropriate sanction for such violation as provided in this Chapter, including civil fine, license suspension or revocation, or both, and impose such sanction in accordance with the provisions of this Chapter.

7. Written notice shall be provided of the Board's decision under this Section.

#### **Section 16-4-4. Formal Conference.**

1. Within thirty (30) days of service of a decision of the Board, a person subject of the decision may request a conference with the Board to seek a review and redetermination of the decision.

2. A request for a conference shall:

- a. Be made in writing to the Board or its designee;
- b. Identify the decision of the Board;
- c. Declare the redetermination sought; and
- d. Include a complete statement of the facts relied on.

3. The Board, after an initial inquiry, may deny the request for a conference and direct the person to proceed to an appeal in accordance with this Chapter.

4. Upon request or its own initiative, the Board may stay any action on its decision until a time not more than thirty (30) days after issuance of a decision from the conference.

5. The Board may confer with the person by phone or in person, or may require the submission of additional written material and will issue a written decision. If the result sought is denied in whole or in part, the decision will state the basis for the denial.

6. After the Board issues its decision, the person may appeal the matters in dispute as provided in this Chapter. The person may request a stay of the decision within ten (10) days after issuance of the decision, provided the request is based upon an intention to request a hearing.

7. If no appeal is made within the time allowed, the decision from a formal conference is final and is not subject to any appeal before the Board or in any court.

#### **Section 16-4-5. Appeal.**

1. Within thirty (30) days of service of a decision of the Board or issuance of a decision from a formal conference, a party aggrieved by the decision may file an appeal with the Board.

2. A request for appeal shall:

- a. Be made in writing to the Board;
- b. Identify the decision of the Board;
- c. Identify any conference decision;
- d. Declare the redetermination sought; and
- e. Include a complete statement of the facts relied on.

3. Upon request or its own initiative, the Board may stay any action on its decision until a time not more than thirty (30) days after issuance of a decision from the appeal.

4. The Board shall conduct a hearing on the applicant's appeal and take testimony and examine documentary evidence as necessary to determine the appeal.

5. After hearing an appeal, the Board shall issue a decision. The decision of the Board on an appeal under this Section shall be the final decision of the Board, provided that the Board shall have been deemed to have issued a final decision denying an appeal if the Board:

a. Fails to schedule and hold a hearing on the merits of an otherwise valid appeal within sixty (60) days after receipt of a notice of appeal; or

b. Fails to issue a written decision within thirty (30) days of the hearing on the merits of the appeal.

6. The Board may permit or require, pursuant to the rules and regulations of the Board, one or more levels of review by its employees or delegates in addition and prior to appeal to the Board, provided that the failure to proceed to a next required level of review shall constitute a waiver of any further appeal or judicial review.

7. The failure to file an appeal pursuant to this Section shall not prevent the aggrieved party from defending any action brought by the Board against the party in Tribal Court.

#### **Section 16-4-6. Judicial Review.**

1. If a party is aggrieved by a final decision of the Board on appeal, the party may challenge the decision by filing a petition requesting judicial review of the Board's decision in the Tribal Court.

2. Judicial review of the Board's decision shall proceed in accordance with the following:

a. The petition for judicial review shall be filed within thirty (30) days of the issuance of the Board's decision;

b. No new or additional evidence may be introduced, but the matter shall be heard on the record established before the Board;

c. No new or additional issues may be raised and only issues raised before the Board may be heard regardless of the Board's authority to hear the issue;

d. The Tribal Court shall uphold all factual findings of the Board unless the Tribal Court concludes that such findings are not supported by the substantive evidence in the record established before the Board;

e. In reviewing legal conclusions reached by the Board, the Tribal Court shall give proper weight to the Board's interpretation of this Title and any rules and regulations of the Board;

f. The Tribal Court shall affirm any determination by the Board that the issuance, renewal or modification of a license is not in the best interests of the Tribe, its members or the community as a whole unless such determination is clearly arbitrary and capricious;

g. The Tribal Court may affirm, reverse, modify or vacate and remand the Board's final decision, but shall affirm the final decision unless the Tribal Court concludes that the final decision of the Board is:

- i. Not supported by the evidence;
- ii. Arbitrary or capricious;
- iii. An abuse of discretion;
- iv. Beyond the Board's authority; or
- v. Otherwise contrary to the laws of the Tribe.

3. The Tribal Court shall dismiss any action brought against the Board if the person filing the action has not exhausted all administrative remedies before the Board, including an appeal to the Board.

4. Notwithstanding anything to the contrary in this Title, the Tribal Court shall not have jurisdiction or authority to award or order the payment of damages or other monies or provide any remedy to a party except for affirming, reversing, modifying or vacating and remanding the decision of the Board.

5. The Tribal Court's jurisdiction to review a final decision of the Board shall be exclusive and a final decision of the Board shall not be subject to appeal, review, challenge, or other action in any court or tribunal except as provided in this Section.

#### **Section 16-4-7. Storage, Sale and Manufacture Violations.**

1. It shall be a violation of this Title:

a. To introduce, store, possess, sell, offer for sale, distribute, transport or manufacture liquor without first obtaining all necessary licenses or in any manner not authorized by this Title;



b. To store, sell, offer for sale, distribute, transport or manufacture liquor in violation of any provision of this Title or the terms of a license issued pursuant to this Title;

c. To deliver liquor to a manufacturer, wholesaler or retailer at any place other than the premises described in the license of such manufacturer, wholesaler or retailer;

d. For any manufacturer, wholesaler or retailer to keep or store any liquor at any place other than on the premises where such manufacturer, wholesaler or retailer is authorized to operate and except as otherwise provided in this Title;

e. For any retailer to take or solicit orders for the delivery of liquor from any person unless such person is registered as a salesman in accordance with this Title;

f. For any retailer to have any interest in the property or business of a manufacturer or wholesaler;

g. For any licensee to neglect or refuse to produce or submit for inspection, examination or audit any records lawfully requested by the Board in accordance with this Title;

h. For a retailer to obtain liquor in unbroken packages except from a manufacturer or wholesale licensee;

i. For a retailer or employee of a retailer to accept or give gifts of liquor in connection with its business, except for the sampling of liquor as provided by a wholesaler in the ordinary course of the trade;

j. For a manufacturer or retailer conducting on-sales to employ any person for the purpose of soliciting the purchase of liquor within the licensed premises on a percentage or commission basis;

k. For a manufacturer or retailer conducting on-sales to sell liquor without insurance coverage as required by this Title;

l. To knowingly employ a person under the age of majority in the sale, distribution or manufacture of liquor;

m. For a manufacturer conducting on-sales, a retailer, or an employee of either to consume liquor or be intoxicated while selling liquor on the licensed premises;

n. For a manufacturer conducting on-sales or a retailer to sell liquor for anything other than cash, check, or credit or debit card transaction or extend credit to any person, organization, or entity for the purchase of liquor;

o. For a retailer conducting off-sales or an employee of such a retailer to sell or give liquor in broken or refilled packages;

p. For a retailer conducting off-sales or an employee of such a retailer to permit the consumption of liquor on the retailer's premises;

q. For a retailer conducting on-sales or an employee of such a retailer to sell or give liquor for consumption off the retailer's premises;

r. To knowingly sell liquor to a person under the age of twenty-one (21) years;

s. For a manufacturer, retailer or employee of either to sell or give any liquor to any person or permit the consumption of liquor on the licensed premises between the hours of two 2:00 a.m. and 6:00 a.m., provided that a manufacturer may sell or give liquor in unopened packages to wholesale and retail licensees during any hour;

t. For a manufacturer or retailer conducting on-sales or an employee of either to sell or give liquor to an intoxicated person within the licensed premises.

2. If an act is a violation of this Title when committed by a licensee, retailer, wholesaler or manufacturer, the licensee, retailer, wholesaler or manufacturer is also liable if the act is committed by one of its employees or agents.

3. In addition to any other consequences for a violation of this Title, including suspension or revocation of a license, a person who commits a violation under this Section shall be subject to a civil fine of up to five hundred dollars (\$500) per occurrence, which may be imposed by the Board pursuant to a notice of violation and thereafter enforced and collected through a civil cause of action brought by the Board on behalf of the Tribe in the Tribal Court.

#### **Section 16-4-8. Violations by Public.**

1. It shall be a violation of this Title for any person:

a. Who is under the age of twenty-one (21) years, to:

i. Purchase or attempt to purchase liquor except at the direction and under the supervision of the Board, its designee, or other law enforcement official for the purpose of enforcing this Title or other applicable law governing liquor on Tribal lands;

ii. Consume or possess liquor except for possession as a part of employment to the extent permitted under this Title and any applicable state law, consumption or possession as part of a bona fide religious ceremony, or consumption or possession in his or her permanent place of residence; or

iii. Attempt to purchase liquor through the use of false or altered identification which purports to show the person to be over the age of twenty-one (21) years;

b. To consume liquor from a broken package in a public place, other than licensed premises specified in a manufacturer license, a retailer license which allows on-sales, or a special event license; or

c. To transfer in any manner an identification of age to a person under the age of twenty-one (21) years for the purpose of permitting such person to obtain liquor, provided that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this subsection.

2. In addition to any other consequences for a violation of this Title, a person who commits a violation of this Section shall be subject to a civil fine of up to one hundred dollars (\$100) per occurrence, which may be imposed by the Board pursuant to a notice of violation and thereafter enforced and collected through a civil cause of action brought by the Board on behalf of the Tribe in the Tribal Court.

**Section 16-4-9. Reporting of Violations.** The Board may report any violation of this Title to the appropriate officials of other jurisdictions and request an investigation and, if appropriate, prosecution of such violation as a violation of the laws of that jurisdiction, including the criminal laws of that jurisdiction.

**Section 16-4-10. Revocation and Suspension of License.**

1. The Board may summarily suspend for up to fifteen (15) days the license of any person upon a finding of imminent danger to the public welfare caused by the licensee or any act or omission of the licensee.

2. The Board, after at least ten (10) days notice and a full hearing, may revoke the license of any person for any of the following:

- a. Repeatedly violating or permitting the violation of any provision of this Title or the rules and regulations of the Board;
- b. Failure or refusal to pay all taxes imposed on the sale, distribution or manufacture of liquor under the laws of the Tribe;
- c. Misrepresentation of a material fact in the licensee's application for a license or any renewal thereof;
- d. The occurrence of any event which would have made the licensee ineligible for a license if the event had occurred prior to the issuance of the license;
- e. Failure to maintain insurance coverage as required by this Title for a continuous period of more than thirty (30) days;
- f. Imminent danger to the public welfare caused by the licensee or any act or omission of the licensee which has not been corrected within a reasonable time after notice from the Board; or
- g. Failure of the licensee to correct an unhealthy or unsafe condition on the licensed premises within a reasonable time after notice from the Board.

3. The Board may suspend the license of any licensee for a period not exceeding one-hundred eighty (180) days as an alternative to revoking the license if the Board is satisfied that the grounds giving rise to the revocation or the circumstances thereof are such that a suspension of the license would be adequate.

4. Any suspension of a license pursuant to this Section shall be effective twenty-four (24) hours after service of notice thereof upon the licensee. During any period of suspension of a license, the licensee shall have and exercise no rights or privileges whatsoever under the license.

5. After revocation of a license, the licensee's rights and privileges under such license shall terminate twenty-four (24) hours after service of notice thereof upon the licensee. Any licensee whose license is revoked shall not be granted any license under the provisions of this Title for a period of two (2) years from the date of revocation.

**Section 16-4-11. Enjoining Business.** In addition to any other remedies available to it, the Board may bring, in the name of the Tribe, an action in any appropriate court to enjoin the operation of any unlicensed business, activity, or function when this Title requires a license for the conduct of such business, activity or function. The enjoining of

a business pursuant to this Section shall be deemed an exclusion of the business pursuant to the Tribe's power to exclude and other inherent powers and authority of the Tribe.

#### **Section 16-4-12. Seizure of Contraband.**

1. In addition to any other remedies available to it, the Board, pursuant to an order issued by the Board, may seize any liquor possessed contrary to the terms of this Title, including liquor possessed for manufacture or sale, as contraband.

2. Upon seizure of any liquor pursuant to this Section, the Board shall inventory all items seized and leave a written copy of such inventory with the person from whom it was seized or, if such person cannot be found, posted at the place from which the liquor was seized.

3. Any person who claims an ownership interest, right of possession to, or other interest in liquor seized pursuant to this Section may request a formal conference regarding or file an appeal of the Board's seizure of such liquor in accordance with the provisions of this Chapter governing appeals before the Board.

4. Upon the expiration or conclusion of any appeal permitted under this Chapter of seizure of liquor pursuant to this Section, including permitted judicial review, such liquor shall be forfeited and all title and ownership interest in such liquor shall vest in the Tribe unless an appeal or judicial review returns such liquor to the person from whom it was seized or other person entitled thereto.

5. If necessary, the Board may file a complaint for forfeiture against any liquor seized pursuant to this Section in the Tribal Court. Upon the Board showing by clear and convincing evidence that seized liquor is contraband under this Title, the Tribal Court shall enter an order that such liquor is forfeited and that all title and ownership interest in such liquor is vested in the Tribe.

6. Any liquor seized pursuant to this Section to which title has vested in the Tribe that is no longer required for evidence may be sold for the benefit of the Tribe or destroyed under the supervision of the Board.

#### **Section 16-4-13. Sovereign Immunity in Enforcement.**

1. Except for valid judicial review of a decision of the Board as provided in this Title, nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Board or any of its agents, officers, officials, personnel or employees.

2. An action brought or taken by the Board, including without limitation the bringing of suit for the collection of fines or enjoining a business, activity or function, shall not constitute a waiver of sovereign immunity as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence or in any other respect.

3. No economic enterprise of the Tribe may claim sovereign immunity as a defense to any action brought or taken by the Board, including a suit for the collection of fines or the enjoining of a business, activity or function of such economic enterprise and, to the extent necessary, the Tribe waives the sovereign immunity of its economic enterprises in any action brought or taken by the Board against such economic enterprise.

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